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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Hans-Georg KREYSCH et al.

Examiner: HUYNH, Phuong N.

Serial No.: 10/530,871

Group Art Unit: 1644

Filed: April 11, 2005

Title: **PHARMACEUTICAL COMPOSITIONS DIRECTED TO ERB-B1 RECEPTORS**

RESPONSE TO RESTRICTION REQUIREMENT

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated February 21, 2007, Applicants hereby elect, with traverse, Group I (claims 1–28), drawn to a pharmaceutical composition comprising a first and a second antibody molecule, or a portion thereof, having the capability to bind to different epitopes located on same or different ErbB receptor molecule types.

Withdrawal of this restriction requirement is respectfully requested. The claims in the instant application involve related subject matter, for example, a pharmaceutical composition comprising a first and a second antibody molecule, or a portion thereof, having the capability to bind to different epitopes located on same or different ErbB receptor molecule types, wherein said first antibody molecule or a portion thereof, comprises binding sites that bind to a first specific epitope on the ErbB1 receptor molecule type, and said second antibody molecule comprises binding sites that bind to a second specific epitope on the same ErbB1 receptor molecule type, as recited in Applicants' elected Group I. A search of all the claims would comprise overlapping subject matter, and it would not be an undue burden on the Examiner to carry out a search. "If search and examination of an entire application can be made without serious burden, the examiner *must* examine it on

the merits, even though it includes claims to independent or distinct invention." (Emphasis added.) M.P.E.P. 803. Accordingly, it is respectfully submitted that the restriction be withdrawn.

Applicants further submit that the Restriction Requirement should be modified to combine Group II (claim 29), drawn to a method of using the claimed pharmaceutical composition, with the elected Group I because they comprise overlapping subject matter. "If a product claim is found allowable, process claims that depend from or otherwise require all the limitations of the patentable product may be rejoined." See M.P.E.P. § 806.05.

Should the Restriction Requirement still be maintained, Applicants will seek reentry of any withdrawn claims once allowable subject matter has been determined. See, for example, M.P.E.P. §821.04, "Rejoinder."

No fees are believed to be due with this response; however, the Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,



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Attorney Docket No.: **MERCK-2990**

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